

Remarks

Claims 1-35 are pending in this application. Claims 1-17 and 35 are withdrawn from consideration as drawn to non-elected subject matter. Claims 30-34 are allowed. There are no amendments to the claims.

Claim rejections under 35 U.S.C. § 103

Claims 18-21, 23, and 25 stand rejected as being unpatentable over Grundy et al. (2002) in view of Di Nocera et al. (1975) and Kirschbaum et al. (USPN 6,174,722).

Only subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103. (MPEP 2141.01.I). Applicants wish to point out that the Grundy et al. (2002) article, which was published in April 2002, and names the inventors Frank Grundy and Tina Henkin as authors, describes the inventors' own work. Therefore, the Grundy et al. (2002) article is not available as prior art under 35 U.S.C. 102 or 103. This is because "Applicant's disclosure of his or her own work within the year before the application filing date cannot be used against him or her under 35 U.S.C. 102(a), or similarly, under 35 U.S.C. 103. (MPEP 2132.01, citing *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982)).

An applicant may overcome prior art rejections relying on references which can be available as prior art under 35 U.S.C. 102(a) by proving that the subject matter relied upon in the reference or activity was applicant's own invention. (MPEP 715.01.) Accordingly, Applicants provide a 37 C.F.R. § 1.132 Declaration by Drs. Henkin and Grundy, which establishes that the others authors of the Grundy et al. (2002) article, Tessa Moir and Margaret Haldelman, did not discover or invent the methods described and claimed in the instant application. Therefore, the Grundy et al. (2002) article describes Applicants' own work and the subject matter relied upon in the reference was Applicants' own invention. Since the Grundy et al. (2002) article published

less than a year before the filing date of the provisional application in the instant case, the article is not available under a section 103 rejection.

Neither Di Nocera, nor Kirschbaum, teach or suggest the assay system of claim 18. Therefore, claim 18 is non-obvious over the cited art of Di Nocera and Kirschbaum.

Claims 19-21, 23, and 25 depend from claim 18 and so are non-obvious for at least the same reason as claim 18. This is because "if an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious." MPEP 2143.03 (citing *In re fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)).

Claims 22 and 24 stand rejected as being unpatentable over Grundy et al (2002) in view of Di Nocera et al. (1975) and Kirschbaum et al. (USPN 6,174,722) as applied to claims 18-21, 23 and 25 above, and further in view of Chopin et al. (1998).

Claims 22 and 24 depend from claim 18. Since claim 18 is non-obvious for the reasons stated above, claims 22 and 24 are also non-obvious for at least the same reasons as claim 18.

Claims 26-28 stand rejected as being unpatentable over Grundy et al (2002), Di Nocera et al. (1975) and Kirschbaum et al. (USPN 6,174,722) as applied to claims 18-21, 23 and 25 above, and further in view of Chopin et al. (1998) and Grundy et al. (1997).

Claims 26-28 depend from claim 18. Since claim 18 is non-obvious for the reasons stated above, claims 26-28 are also non-obvious for at least the same reasons as claim 18.

For the reasons stated above, withdrawal of the rejection under 35 U.S.C. 103 is respectfully requested.

Allowable Subject Matter

Claim 29 stands objected to as being dependent upon a rejected base claim, but the Office stated that it would be allowable if rewritten in independent form.

In view of the remarks above, since base claim 18 is non-obvious, claim 29 is properly dependent upon claim 18. Applicants respectfully request withdrawal of this objection.

Applicants acknowledge and thank the Office for the allowance of claims 30-34.

In conclusion, it is respectfully submitted that the application is now in conditions for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Date: May 1, 2007

/diane h. dobre/
Diane H. Dobrea
Reg. No. 48,578
(614) 621-7788
(614) 621-0010 (fax)
ddobrea@calfee.com